

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

DAVID DODD, §
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Plaintiff, § **CIVIL ACTION NO. 6:18-CV-00393-RWS-JDL**
§
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§
§
v. §
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§
CLEARWATER BAY PROPERTY §
OWNERS ASSOCIATION, INC., §
STEVEN MARABLES, §

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

The above entitled and numbered civil action was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. Plaintiff initiated this action on August 6, 2018. Docket No. 1. On August 23, 2018, the Magistrate Judge issued a Report and Recommendation (“Report”) recommending that Plaintiff’s claims be dismissed for failure to state a claim. Docket No. 5. Plaintiff filed objections to the Magistrate Judge’s Report. Docket No. 7. The Court reviews *de novo* the portions of the Magistrate Judge’s findings to which objections have been raised. 28 U.S.C. § 636 (b)(1).

In his Report, the Magistrate Judge discussed the procedural history of Plaintiff’s filings where he had previously brought these claims in Case No. 6:14-cv-767-KNM. Docket No. 5 at 1–2. As explained by the Magistrate Judge, the exact same claims previously brought also formed the basis of Plaintiff’s current allegations, and those allegations were previously dismissed for failure to prosecute. *Id.* The Magistrate Judge ultimately found that Plaintiff’s claims were time barred. *Id.* at 2–3 (citing *Teamah v. Applied Materials, Inc.*, No. 17-50364, 2017

WL 5125658, at *2 (5th Cir. Nov. 3, 2017) (“where a section 1981 claim is brought in Texas, the two year statute of limitations for personal injury actions in Texas controls.”)). The Magistrate Judge further acknowledged that Plaintiff added allegations against Steven Marables and alleged that Mr. Marables told Plaintiff after the filing of his initial suit that Mr. Marables knew about the deed restriction. *Id.* at 3–4. However, as the Magistrate Judge explained, the Court does not have jurisdiction over any claims against Mr. Marables as the parties are not diverse and the allegations do not raise a federal question. *Id.*

In his response to the Magistrate Judge’s Report, Plaintiff does not object to any specific conclusion of the Magistrate Judge, but instead adds additional facts to supplement his claim. Docket No. 7. Specifically, Plaintiff discusses a racial epithet made towards his girlfriend on May 26, 2015, followed by a later alleged attack, as well an accident that occurred while he was driving a tractor and was hit by someone named Jennifer Dean. *Id.* It appears the relation of these allegations to the instant action is that Plaintiff alleges there is some connection to Mr. Marables. *Id.* However, as the Magistrate Judge explained, the Court does not have jurisdiction over those claims, and the Court finds no error in that conclusion. These allegations are not made against a defendant that is a citizen of a different state as plaintiff, exceeding an amount in controversy of \$75,000, nor do they invoke a violation of the U.S. Constitution, federal law, or treaty to which the United States is a party, such that the Court might have federal question jurisdiction. 28 U.S.C. § 1332; 28 U.S.C. § 1331. To the extent any of the newly alleged facts support legal claims, those claims would need to be brought in state court.

Additionally, Plaintiff subsequently filed a notice requesting forms for alleged wrongful arrest against a police officer and the Caney City Police Department. Docket No. 8. These allegations and request appear wholly unrelated to Plaintiff’s allegations in this matter. Therefore, the Court will not consider them at this time. However, the Clerk of Court is directed

to send Plaintiff a copy of the standardized § 1983 civil rights lawsuit form to Plaintiff at his address so that he may fill it out and return it to the Court, as well as a copy of the application to proceed *in forma pauperis*.

For the reasons discussed herein, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly **ORDERED** that the complaint is hereby **DISMISSED WITH PREJUDICE**.

SIGNED this 2nd day of October, 2018.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE